

Message Text

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ACTION DLOS-06

INFO OCT-01 ISO-00 AF-10 ARA-16 EA-11 EUR-25 NEA-10 RSC-01

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NSC-07 PA-04 PRS-01 SPC-03 SS-20 USIA-15 CEQ-02

COA-02 COME-00 EB-11 EPA-04 IO-14 NSF-04 SCI-06

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FM AMEMBASSY JAKARTA

TO SECSTATE WASHDC 1477

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

AMEMBASSY TOKYO

USUN NEW YORK 713

C O N F I D E N T I A L SECTION 1 OF 3 JAKARTA 3748

FROM US LOS TEAM

USUN PASS AMBASSADOR STEVENSON

E.O. 11652: GDS

TAGS: PBOR

SUBJ: LOS: GROUP OF FIVE STRAITS MEETING

1. SUMMARY: GROUP OF FIVE MET IN LONDON MARCH 20-21
TO DISCUSS STRAITS. OBJECT WAS TO DISCUSS AD REFERENDUM
BASIS FOR ACCEPTABLE DRAFT USABLE AT OR BEFORE START
CARACAS SESSION, NOT RPT NOT ULTIMATE FALLBACK. US.
USSR AND FRANCE OPPOSED LINK BETWEEN INNOCENT PASSAGE
AND STRAITS IN DRAFT. USSR (STRONGLY) AND JAPAN
(PRELIMINARY GUIDANCE) OPPOSED 6-MILE EXCEPTION;
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FRANCE SYMPATHIZED WITH USSR TACTICAL CONCERNS. AT

FRENCH SUGGESTION, INFORMAL US COMMENTS FORMED BASIS STRAITS DISCUSSION; WE MADE CLEAR THEY WERE NOT A USG PROPOSAL.

2. USSR AGREED TO NON-SUSPENDABLE INNOCENT PASSAGE IN STRAITS CONNECTING HIGH SEAS AND TERRITORIAL SEA, AND IN PRINCIPLE TO EXCEPTION FOR PEMBA AND MESSINA IF US CAN COME UP WITH ACCEPTABLE FORMULA. US, USSR AND FRANCE OPPOSED COASTAL STATE REGULATION, AND FAVORED FLAG STATE OBLIGATIONS. USSR PREPARED ACCEPT US VIEW THAT OBLIGATION SHOULD BE GENERAL, BUT SAID IF DEVELOPING COUNTRIES PICK UP SPECIFIC USSR PROHIBITIONS, US SHOULD NOT OPPOSE. JAPAN INFORMED GROUP IT COULD NOT SUPPORT OVERFLIGHT OR SUBMERGED TRANSIT, BUT WOULD NOT SAY ANYTHING PUBLICLY TO EMBARRAS EFFORTS OF ITS MARITIME STATE COLLEAGUES UNLESS IT HAD TO. UK SAID IT WOULD NOT INTRODUCE ARTICLES UNTIL MATTER REVIEWED AT HEADS OF DELEGATION MEETINGS. UK (ANDERSON) REDRAFTING ARTICLES; SOVIETS REQUESTED ANDERSON COORDINATE WITH OXMAN BEFORE SENDING ARTICLES TO OTHER GROUP MEMBERS. WE AGREED; UK NON-COMMITTAL. AT JAPANESE REQUEST, WE GAVE GENERAL BRIEFING ON ARCHIPELAGOS IN HIGHLY CONSERVATIVE TERMS, STRONGLY EMPHASIZING NEED FOR LIMITED DEFINITION AND FOR SATISFACTORY NAVIGATION AND OVERFLIGHT RIGHTS IN BROAD AREA.

3. COMMENTS: FRENCH VERY WARM TOWARD US IN SESSION AND PRIVATELY. SOVIETS NOT OVERLY WELL PREPARED, DOCTRINAIRE, AND PERSISTENTLY REFUSED TO DISCUSS SPECIFIC PROBLEMS (E.G., ON SIX-MILE EXCEPTION) EXCEPT IN PRIVATE DISCUSSION WITH US. UK OBVIOUSLY ANNOYED AT HARDER-LINE US-USSR-FRENCH LINE UP. JAPANESE VERY QUIET. US TACTICAL SUCCESSES (E.G., FRANK DISCUSSION TOWARD AD REFERENDUM AGREEMENT ON ARTICLES ACCEPTABLE TO GROUP RATHER THAN COMMENTS ON UK ARTICLES; US UNOFFICIAL STRAITS DRAFT USED AS BASIS OF DISCUSSION; NO DISCUSSION ON ULTIMATE FALLBACKS; CONSISTENT OPPOSITION TO MOVING ON TO ANOTHER POINT BEFORE SOME POSSIBLE BASIS FOR CONSENSUS EMERGED) WERE RESULT OF CONSISTENT SUPPORT BY FRANCE AND SOVIETS. WE AND SOVIETS UNSUCCESSFULLY

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ATTEMPTED TO ENCOURAGE FRENCH TO ASSUME REDRAFTING RESPONSIBILITIES. IT SEEMS CLEAR THERE IS NO REAL SUBSTITUTION FOR US LEADERSHIP, AND THAT GROUP IN ESSENCE ACCEPTS THIS. IN LIGHT CLEAR SOVIET SIGNAL IT PREPARED TO COMPROMISE ON ECONOMIC ZONE IN EXCHANGE FOR STRAITS, AND JAPANESE STRAITS POSITION, THE FUTURE ROLE OF JAPAN IN THE GROUP OF 5 MAY BE AMBIGUOUS. IT SEEMS FAIRLY CLEAR JAPAN WILL SUPPORT ARCHIPELAGO CONCEPT, AND WILL

MAINLY SEEK REASONABLE PHASE-OUT PERIOD ON FISHERIES IN ARCHIPELAGO. USG MIGHT MAKE GRAVE MISTAKE IN INTERPRETING CURRENT SOVIET HARD LINE ON STRAITS AS SUBSTANTIVE RATHER THAN MANIFESTATION OF USUAL SOVIET BARGAINING TACTICS; WE MAY FIND CONSIDERABLE SOVIET WILLINGNESS TO COMPROMISE WHEN THEY CONCLUDE THE "TIME IS RIGHT". OUR PRELIMINARY ESTIMATE IS THAT GROUP OF 5 IS NOT AT PRESENT INCLINED TO SUPPORT HARD-LINE OPPOSITION ON ARCHIPELAGOS OR INSISTANCE ON GREATER TRANSIT RIGHTS IN ARCHIPELAGO THAN IN STRAITS, BUT THAT THEY WOULD SUPPORT STRAITS TRANSIT REGIME AS OPPOSED TO INNOCENT PASSAGE.

4. THE FOLLOWING POSITIONS WERE EXPRESSED ON MAJOR ISSUES.

5. TACTICS: APPROACH TO ARTICLES.

A. UK WANTED PRECISE ARTICLES TO TACKLE THAT 5 COULD SUPPORT; THEY WERE ALSO EAGER TO ACQUIRE SOME UNDERSTANDING OF WHAT MIGHT BE ACCEPTABLE IN ULTIMATE COMPROMISE ARTICLES. UK ASSESSMENT WAS THAT SOME INITIATIVE WAS NECESSARY TO START MEANINGFUL NEGOTIATIONS TO NARROW DIFFERENCES BETWEEN MARITIME POWERS AND SUPPORTERS OF STRAIT STATES' POSITION. SOVIETS FELT IT WAS PREMATURE TO MAKE CONCESSIONS OR COMPROMISES IN ARTICLES AS LDC'S HAD MADE NO MOVEMENT IN QUOTE MARITIME POWERS UNQUOTE DIRECTION. FRENCH GENERALLY AGREED, BUT FELT THERE WAS VALUE IN PREPARING DRAFT AGREED UPON IN SUBSTANCE. BOTH FRENCH AND SOVIETS FELT ALL 5 SHOULD NOT CO-SPONSOR AS THIS WOULD BRING AUTOMATIC ADVERSE LDC REACTION. SOVIETS BELIEVED DRAFT ARTICLES SHOULD NOT CONSIST OF FINAL FALLBACK BUT LEAVE ROOM FOR CONFIDENTIAL

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CESSIONS; VIRTUALLY ALL OF THEIR OBJECTIONS TO UK TEXT WERE PHRASED IN TACTICAL TERMS.

B. US, USSR AND FRANCE INDICATED STRONGLY THAT TRANSIT IN STRAITS SHOULD BE TREATED AS FUNCTIONALLY DIFFERENT PROBLEM FROM INNOCENT PASSAGE IN TERRITORIAL SEA GENERALLY. ADOPTION OF THIS APPROACH WAS FACILITATED BY ACCEPTANCE OF FRENCH SUGGESTION THAT 5 CONCENTRATE DURING SECOND DAY ON INFORMAL U.S. DRAFT ON TRANSIT IN STRAITS RATHER THAN UK TEXT. SOVIETS FAVORED INTERNATIONAL STANDARDS IN IMPORTANT STRAITS. BOTH SOVIETS AND FRENCH REFERRED SEVERAL TIMES TO GENERAL APPROACH FOR STRAITS TRANSIT BASED ON HISTORIC USAGE. US STRESSED NEED FOR FLAG STATE OBLIGATIONS AS COUNTER TO COASTAL STATE RIGHTS. BRITISH WERE INCLINED TOWARD

RECOGNITION OF CERTAIN COASTAL STATE RIGHTS IN STRAITS.
US QUESTIONED WISDOM OF ENCOURAGING NEGOTIATIONS ON
INNOCENT PASSAGE AS MANY STATES MIGHT
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FM AMEMBASSY JAKARTA
TO SECSTATE WASHDC 1478
INFO AMEMBASSY LONDON
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C O N F I D E N T I A L SECTION 2 OF 3 JAKARTA 3748

FROM US LOS TEAM

USUN PASS AMBASSADOR STEVENSON

C. SOVIETS MADE CLEAR THAT THEY WERE NEGOTIATING FOR
A PACKAGE SETTLEMENT. ACCORDINGLY, COMPROMISE MIGHT
INVOLVE ISSUES OTHER THAN STRAITS. THEY REFERRED
SPECIFICALLY TO AN ECONOMIC ZONE AND FISHERIES IN THIS
REGARD. SOVIETS, FRENCH, BRITISH AND JAPANESE
QUESTIONED WISDOM OF US REFERENCE IN ARTICLES TO SPECI-
FIC CONVENTIONS. IT WAS POINTED OUT THAT MANY STATES
WERE NOT PARTIES TO THE NAMED AGREEMENTS AND WOULD NOT
LIKE TO BECOME BOUND BY MERE REFERENCE. TENTATIVELY
AGREED APPROACH WAS TO REPRODUCE IN DRAFT ARTICLES
REFERENCE TO GENERALLY ACCEPTED INTERNATIONAL STANDARDS,
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WITH FOOTNOTE INDICATING SPONSOR'S WILLINGNESS TO NAME THE LATEST CONVENTIONS IF THIS CONSIDERED DESIRABLE.

6. ENFORCEMENT. DIFFERENCES EMERGED OVER EXTENT TO WHICH COASTAL STATES WOULD HAVE ENFORCEMENT POWERS IN INTERNATIONAL STRAITS AND IN TERRITORIAL SEA. UK REMAINS WEDDED TO VIEW THAT ISSUE SHOULD NOT BE RAISED AS MATTER IS UNCLEAR. US, USSR AND FRENCH BELIEVE ENFORCEMENT POWERS ARE ALREADY LODGED IN THE COASTAL STATE IN THE TERRITORIAL SEA UNDER EXISTING INTERNATIONAL LAW. ACCORDINGLY, US STRESSED NEED TO LIMIT EXERCISE OF STRAIT STATE ENFORCEMENT POWERS IN INTERNATIONAL STRAITS, AND NOTED THAT DISREGARDING ISSUE (AS UK ARTICLES DO) COULD LEAD TO INTERPRETATION THAT COASTAL STATE CAN ENFORCE EVERYTHING, WITH NONE OF THE PROTECTIONS IN THE US ARTICLES. SOVIETS INDICATED IT WAS UNNECESSARY TO SPELL OUT ENFORCEMENT SINCE AUTHORITY TO MAKE REGULATIONS INHERENTLY CARRIED AUTHORITY TO ENFORCE IN CIVIL LAW SYSTEM.

7. OVERFLIGHT. US STRESSED IMPORTANCE OF PROVISION FOR OVERFLIGHT OVER INTERNATIONAL STRAITS. JAPANESE STATED THEY DID NOT SUPPORT THIS CONCEPT BUT WOULD NOT SAY SO PUBLICLY UNLESS ABSOLUTELY NECESSARY. SOVIETS REFERRED TO RIGHT OF AIRCRAFT TO OVERFLY ONLY CERTAIN INTERNATIONAL STRAITS, DISTINGUISHED THIS FROM VESSELS, AND MADE POINTED REFERENCE TO FACT OVERFLIGHT RIGHT APPLIED TO KOREAN STRAITS BUT NOT TERRITORY OF JAPAN.

8. SUBMERGED TRANSIT. AS WITH OVERFLIGHT, JAPANESE ANNOUNCED PRELIMINARY POSITION THAT SUBMARINES MIGHT HAVE TO TRAVERSE INTERNATIONAL STRAITS ON SURFACE; THEY WOULD REFRAIN FROM STATING POSITION PUBLICLY UNLESS ABSOLUTELY NECESSARY. JAPAN WOULD PREFER (#)

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SPECIFICALLY
RELATED TO PROBLEMS OFF JAPAN, AND SAID THAT IF IT
WAS THE LATTER, THERE MIGHT BE "OTHER MEANS" TO

RESOLVE IT. OGISO DID NOT REPLY DIRECTLY, BUT IMPLIED THAT PROBLEM WAS OFF JAPAN.

9. EXCEPTIONS TO UNIMPEDED TRANSIT. MUCH ATTENTION WAS DEVOTED TO PROPOSAL IN UK DRAFT ARTICLES THAP KIAM
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IN BREADTH FROM APPLICATION OF UNIMPEDED TRANSIT REGIME.

US INDICATED IT WAS STUDYING THE POSSIBILITY OF SUCH AN EXCEPTION AND UNSUCCESSFULLY PRESSED FOR SUBSTANTIVE RATHER THAN TACTICAL ANALYSIS OF SUCH AN EXCEPTION. SOVIETS WERE STRONGLY OPPOSED TO SIX MILE EXCEPTION AND OFFERED A NUMBER OF THEORETICAL AND TACTICAL ARGUMENTS AGAINST IT. AS MATTER OF PRINCIPLE, THEY WERE OPPOSED TO EXCEPTIONS BASED ON BREADTH CRITERION AS THERE WAS NO LOGICAL BASIS FOR SELECTION OF FIGURE (THE SOVIETS CLAIM A 12 MILE TERRITORIAL SEA AS DO THE FRENCH). THEY FEARED DOOR WOULD BE OPENED TO ADDITIONAL BREADTH FIGURES SUCH AS 24 MILES. SOVIETS SAW NO GAINS FROM USE OF 6 MILE FIGURE AS NO STATE HAD FORMALLY MADE THIS PROPOSAL. THEY ALSO SAW NO "ADVANTAGES" IN STARTING A LIST OF EXCEPTED STRAITS. THE JAPANESE ALSO HAD RESERVATIONS ABOUT A SIX-MILE EXCEPTION. THE FRENCH STATED THE CONCEPT WAS NOT HARMFUL TO FRENCH INTERESTS AND THEY WOULD LIKE TO HELP ITALY, BUT SAW MERIT IN SOVIET TACTICAL CONCERNS. JAPANESE STATED THAT STRAITS OF MALACCA WERE VERY IMPORTANT TO THEM AND CLEAR IMPLICATION WAS THAT THEY HOPED FOR REGIME OF FREE TRANSIT FOR COMMERCIAL VESSELS THROUGH MALACCA. JAPANESE HINTED AT ANOTHER POSSIBLE FORMULATION FOR EXCEPTIONS BY STATING THEY PREFERRED "MULTINATIONAL" CRITERION FOR
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DETERMINING WHERE TRANSIT PASSAGE WOULD APPLY; PRESUMABLY THIS WOULD CREATE TRANSIT RIGHTS ONLY IN STRAITS BORDERED BY MORE THAN ONE STATE. SOVIETS REPEATEDLY MADE POINT THAT MONTREUX CONVENTION WOULD CONTINUE TO APPLY TO TURKISH STRAITS (US AGREED BUT NOTED IT WAS NOT A PARTY TO MONTREUX AND EXPLAINED THAT DRAFT WOULD HAVE TO COVER PROBLEM OF NOT PERMITTING A FEW STATES TO SET UP A SPECIAL REGIME AND BIND OTHERS.) USSR FINALLY SUGGESTED THAT PROBLEMS WITH STRAITS SUCH AS MESSINA AND PEMBA MIGHT BE SOLVED BY ANOTHER FORMULA NOT BASED ON MILEAGE. US POINTED OUT THAT RIGHT OF NONSUSPENDABLE INNOCENT PASSAGE IN ARTICLE 16 (4) OF CONVENTION ON TERRITORIAL SEAS AND CONTIGUOUS ZONE WOULD CONTINUE TO APPLY IN ANY EXCEPTED STRAITS.

SOVIETS AGREED, LIMITING FORMULA TO STRAITS CONNECTING HIGH SEAS AND TERRITORIAL SEA. SOVIETS ALSO STRESSED THAT 6 MILE EXCEPTION WAS INCONSISTENT WITH BASIC CONCEPT THAT UNIMPEDED TRANSIT SHOULD APPLY TO ALL INTERNATIONAL STRAITS CONNECTING TWO PARTS OF THE HIGH SEAS.

ONCE AGAIN, SOVIETS STRESSED THAT A GENERALLY ACCEPTED INTERNATIONAL RIGHT HAD TO BALANCE COASTAL AND NON-COASTAL INTERESTS IN INTERNATIONAL STRAITS. AFTER WE PRIVATELY URGED MOVCHAN TO CONSIDER WHETHER RESULT THAT EXCEPTED CERTAIN STRAITS MIGHT BE A BETTER REGIME FOR THE IMPORTANT STRAITS, HE SEEMED TO MODERATE HIS POSITION ON THE PRINCIPLE OF EXCEPTION, AND IT WAS THEN THAT HE AGREED TO EXCLUDE MESSINA IN PRINCIPLE. POINT ON SIX MILE EXCEPTION WAS LEFT BY UK SAYING WORK WOULD CONTINUE ON FINDING FORMULA ACCEPTABLE TO ALL IN GROUP.

10. LIABILITY. US POINTED OUT THAT LIABILITY WAS IMPROTANT FLAGE STATE OBLIGATION THAT SHOULD BE OFFERED

NOTE BY OC/T: (#) OMISSION, CORRECTION TO FOLLOW.

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C O N F I D E N T I A L FINAL SECTION OF 3 JAKARTA 3748

TO COUNTERACT DEMANDS FOR EXCESSIVE COASTAL STATE RIGHTS.
FRANCE AS USUAL HAD PROBLEMS WITH LIABILITY PROVISIONS,
BUT SEEMED TO INTIMATE MORE FLEXIBILITY THAN USUAL.
UK AND JAPAN WERE ALSO CONCERNED ABOUT ACCEPTING
LIABILITY PROVISIONS. SOVIETS TOOK POSTURE THAT
LIABILITY WAS EXTRAORDINARILY COMPLICATED AREA OF INTER-
NATIONAL LAW
THAT PROBABLY SHOULD NOT BE INTRODUCED
INTO DRAFT STRAITS ARTICLES.

1. MARINE POLLUTION. US INDICATED THAT SERIOUS CON-
SIDERATION WAS BEING GIVEN TO DISTINCTION BETWEEN
DISCHARGE AND CONSTRUCTION STANDARDS, I.E., COASTAL
STATES SHOULD NOT ESTABLISH OR ENFORCE CONSTRUCTION
STANDARDS. US WAS THINKING THERE SHOULD BE NO COASTAL
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STATE COMPETENCE IN TERRITORIAL SEA OR IN INTERNATIONAL
STRAITS OVER VESSEL CONSTRUCTION STANDARDS DUE TO ITS
SERIOUS POTENTIAL FOR IMPEDING NAVIGATION IN EITHER
REGIME. US FELT THAT REFERENCE TO MARINE POLLUTION
IN GENERAL TERMS (SUCH AS IN UK DRAFT ARTICLES) WAS
DANGEROUS AND MORE SPECIFIC PROVISIONS WERE DESIRABLE.
IN RESPONSE GENERAL SUPPORT IN ROOM FOR UK CROSS-
REFERENCE APPROQVO, US SAID QUESTION MIGHT BE DEALT
WITH BY CROSS REFERENCE TO PORTION OF TREATY DEALING
WITH MARINE POLLUTION IF WE KNEW WHAT MARINE POLLUTION
SECTION WOULD SAY; OTHERWISE IT MIGHT CAUSE DIFFICULTIES.
MATTER COULD BE REVIEWED AFTER PARIS MARINE POLLUTION
MEETING. FRANCE SUGGESTED ZERO-DISCHARGE OBLIGATIONS
IN TREATY, RATHER THAN STRAITS STATE REGULATION. US
AND UK FELT THAT ZERO-DISCHARGE STANDARDS MIGHT BE
UNWORKABLE IN MALACCA.

12. DISPUTE SETTLEMENT. US STATED THAT COMPULSORY
DISPUTE SETTLEMENT PROCEDURES UNDERPINNED MANY OF ITS
SUBSTANTIVE POSITIONS AND THAT ACCEPTABLE ARTICLES
WERE ESSENTIAL IN TREATY. WE WERE APPROACHING CON-
CLUSION THAT COMPULSORY DISPUTE SETTLEMENT SHOULD APPLY
TO ALL PARTS OF TREATY, BUT WITH EXCEPTIONS FOR GOVERN-
MENT NON-COMMERCIAL SHIPS AND STATE AIRCRAFT. FRANCE
SUPPORTED A GENERAL REFERENCE TO DISPUTE SETTLEMENT
AND SAID DISPUTE SETTLEMENT PROVISIONS SHOULD BE
DISCUSSED AT UPCOMING HEADS OF DELEGATION MEETING.

SOVIETS NOTED THEIR TRADITIONAL DIFFICULTIES WITH PROBLEM OF DISPUTE SETTLEMENT. BOTH SOVIETS AND THE FRENCH WERE NEGATIVE ON UK'S SUGGESTED REFERENCE TO USE OF INTERNATIONAL COURT OF JUSTICE.

13. ARCHIPELAGOS. US, USSR AND FRANCE SUGGESTED DELETION OF REFERENCE TO ARCHIPELAGOS IN UK DRAFT ARTICLES ON TERRITORIAL SEA. AFTER US INFORMED GROUP OF PLANS TO PROCEED TO INDONESIA FOR DISCUSSION ON ARCHIPELAGOS, JAPANESE REQUESTED BRIEFING. GROUP WAS TOLD US WAS MAKING ATTEMPT TO EXPLORE POSSIBLE ACCEPTABLE DEFINITIONS OF AN ARCHIPELAGO IN CONJUNCTION WITH NAVIGATIONAL RIGHTS GREATER THAN IN US PROPOSAL FOR INTERNATIONAL STRAITS. GEOGRAPHICAL DIFFERENCES BETWEEN
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SHORT, NARROW BODIES OF WATER AND LONG, WIBXSODIES WERE NOTED BY US. IN LIGHT OF GREAT INTEREST WAS DISPLAYED BY GROUP, WE AGREED TO INFORM MEMBERS OF RESULTS OF EXPLORATORY DISCUSSION WITH INDONESIANS. JAPANESE EXPRESSED STRONG HOPE THAT THERE WOULD BE NO EFFECT ON RESOURCES (E.G., FISHERIES) IN ANY ARCHIPELAGO UNTIL AFTER TREATY ENTERED INTO FORCE. (UNCLEAR WHETHER THIS LATTER POINT WAS INDICATION OF JAPANESE THINKING ON PROVISIONAL APPLICATION.) CONSERVATIVE TONE OF US SUBSTANTIVE BRIEFING ON ARCHIPELAGOS PROMPTED SHARP REBUKE FROM SIR ROGER JACKLING: "I HOPE YOU ARE AWARE OF THE IMPORTANCE OF REDUCING THE NUMBER OF OPP
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